

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

Case No.	<u>EDCV 14-779-KK</u>	Date	<u>November 30, 2015</u>
Title	<u>Craig M. Fratt v. Carolyn W. Colvin</u>		

Present: The Honorable	Kenly Kiya Kato, United States Magistrate Judge		
Deb Taylor	n/a	n/a	
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Petitioner:		Attorneys Present for Respondent:	
n/a		n/a	

Proceedings: **(In Chambers) Order Denying Motion for Fees Without Prejudice**

Plaintiff's counsel, Shanny Lee, has filed a Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b). For the reasons set forth below, the motion is denied without prejudice for failure to comply with Court orders.

**I.
PROCEDURAL BACKGROUND**

On April 21, 2014, Plaintiff Craig M. Fratt ("Plaintiff") filed the complaint in this action. See ECF Docket No. ("Dkt.") 1 at 1. Plaintiff alleged defendant Carolyn W. Colvin ("Defendant") had improperly denied Plaintiff's applications for disability insurance benefits and supplemental security income. Id. at 2-3.

On April 23, 2015, the Honorable Stephen J. Hillman issued a Case Management Order ("CMO"). See Dkt. 5. The CMO requires as follows:

Plaintiff's counsel shall electronically file a motion or petition for attorney's fees pursuant to 42 U.S.C. § 406(b) and manually serve copies on the Office of Regional Counsel and on the plaintiff. Plaintiff's counsel shall state in any notice that plaintiff may file any statement or opposition with the court not more than fourteen (14) days after service of the motion/petition, and that any statement or opposition filed by plaintiff shall be served on both plaintiff's counsel and counsel for the Commissioner (the Assistant United States Attorney assigned to the case).

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Id. at 6 (emphasis added).

On October 28, 2015, Plaintiff's counsel, Shanny Lee ("Counsel"), filed a Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) ("Motion"). See Dkt. 20. The Motion seeks an award in the gross amount of \$24,163.23 for representing Plaintiff. Dkt. 21 at 1-2. However, Counsel failed to file any document showing Plaintiff was served with the Motion, or provided notice of his opportunity to file a statement or opposition to the Motion. See id.; Dkt. 5.

Hence, on November 13, 2015, the Court issued an Order to Show Cause ("OSC") Why Counsels Motion for Attorneys Fees Pursuant to 42 U.S.C. § 406(b) Should Not Be Denied for Failure to Comply with 20 C.F.R. § 404.1725(a)(7) and Court Orders. See Dkt. 27. Specifically, the OSC ordered as follows:

If Counsel desires to pursue the Motion, Counsel must: (1) serve copies of the Motion and Motion-related documents on Plaintiff; (2) provide notice to Plaintiff that he may file a statement or opposition to the Motion with the Court not more than fourteen days after service; and (3) file written verification of the foregoing with the Court . . .

Id. at 3-4 (emphasis added). The Court warned Counsel's failure to act as directed in the OSC would result in denial of the Motion without prejudice. Id.

On November 16, 2015, Counsel filed a Proof of Service. See Dkt. 28. However, Counsel did not file written verification showing Counsel provided notice to Plaintiff that he may file a statement or opposition to the Motion with the Court not more than fourteen days after service.

**II.
DISCUSSION**

Here, Counsel has twice failed to comply with Court orders. Despite the CMO and OSC, Counsel failed to state in any notice that Plaintiff may file any statement or opposition to the Motion with the Court not more than fourteen days after service of the Motion, and that any statement or opposition filed by Plaintiff shall be served on Counsel

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and counsel for Defendant. See Dkt. 5 at 6; Dkt. 27 at 3-4. Thus, while the Motion appears to have been served on Plaintiff, there is no record establishing Plaintiff was advised of his right to file a statement or opposition to the Motion as required by both the original CMO and subsequent OSC.

Accordingly, IT IS HEREBY ORDERED that Counsel's Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(b) is DENIED WITHOUT PREJUDICE. If Plaintiff's Counsel wishes to file a renewed motion for fees, Counsel is ordered to comply with (1) all relevant statutory provisions, including 20 C.F.R. § 404.1725(a)(7); and (2) all relevant Court orders, including the April 23, 2015 CMO.